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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 8073 OF 2006

Bank Karmachari Sangh.... Petitioner

versus

Pune District Central Co-op.Bank..... Respondent.

Shri A.S.Rao for the petitioner
Shri A.K.Gupte i/b M/s. Desai & Desai Associates for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 26TH FEBRUARY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The order passed by the Industrial court in a complaint filed by the petitioner, who is a representative union below Exh.U-2 dated 19-10-2006 is challenged by filing the present writ petition. The petitioner along with the complaint, moved an application under section 30(2) of MRTP & PULP Act and prayed for interim relief in the nature of restraining the respondent bank from implementing the Resolution bearing No. 19.5 which goes to confer the right of regular promotion on the persons acting as incharge junior agents and officers in grade I and grade II. The said resolution came to be challenged by

representative union by contending that the respondent employer is guilty of favouritism which constitute unfair labour practice under item 5 of schedule IV of the Act.

3. Placing reliance on the guidelines providing for grant of promotion it is submitted that the prevailing practice is being flouted with a view to favour a group of workmen. It is not in dispute that the guidelines provide grant of promotion based on merit-cum-seniority. It is an admitted position that the bank had conducted a selection process in the year 2005 and promotions were given to about 500 persons. It is the case of the respondent that after filling in about 500 posts, balance 177 posts still remained to be filled in and hence the bank passed a resolution conferring the promotions in favour of officers who are working as incharge officiating in the said post for a given period of time. Perusal of the criteria followed by bank while selecting officers for appointment to the promotional post in the year 2005 clearly indicate that 75 marks were assigned with a view to determine merit based on educational qualifications, oral interviews etc. Only one mark was earmarked for acting as an incharge in the promotional post for each year of service as incharge. Whereas 25 % of the marks were set apart for seniority with a break up of one mark for each completed year of

service. It is thus clear that the practice which was followed by the bank in the past had fixed the criteria of merit-cum-seniority. The merit was to be determined having regard to the qualifications and interview. Giving a go back to the selection process of merit-cum-serniority, a fortuitous circumstance has been taken to be the criteria for granting regular promotion and the said criteria laid down in the resolution bearing no.19.5 is to the effect that all such persons who are acting as incharge in the promotional post and who have completed 12 years as incharge be granted regular promotion. According to the learned counsel for the petitioner, the criteria is obviously unsustainable in law and the decision in conferring promotions to the persons working as incharge, is with a view to favour a group of workmen, which results in discrimination against other eligible employees. In the submission of the learned counsel for the respondent, no employee is deprived of any promotional chance. Alternatively he submits that if few meritorioys employees are deprived of promotion, there interest can be taken care of by the Bank. The Industrial court has recorded a perverse finding "that the employees who could not get promotion through seniority list, merit and also written examination, are promoted as incharge on the higher posts and so by the disputed resolution, those who were deprived of promotion, are benefited and hence the disputed

resolution would prove beneficial and proper in the interest of the employees". It is hard to digest that if someone fails to satisfy the criteria laid down for the promotional post, he needs to be promoted. A fortuitous circumstance of working as an incharge cannot be a substitute for prevailing criteria of merit-cum-serniority.

4. I have no iota of doubt in my mind that the petitioner has made out a strong primafacie case for grant of interim relief,. The balance of convenience is also in favour of the petitioner. I have heard the learned counsel appearing for the respective parties and till date the resolution impugned in the complaint has not been given effect to. Hence in my view ends of justice would be met by granting interim relief prayed for by the petitioner till the decision of the complaint. In the result the impugned order passed by the Industrial court is quashed and set aside. The Industrial court is directed to decide the complaint as expeditiously as possible, uninfluenced by the observations made in this order and in accordance with law. The respondent is restrained from implementing the resolution bearing No.19.5 dated 14-8-2006 till decision of the complaint by the Industrial court. Rule made absolute in above terms. No order as to costs.

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